
OLR Bill Analysis

SB 249

AN ACT PROMOTING RETIREMENT SAVINGS.

SUMMARY:

This bill creates the Connecticut Retirement Security Trust Fund (the "trust") to provide a public retirement plan for certain private-sector employees, who are automatically enrolled in the plan unless they opt out. The trust is administered by an 11-member Connecticut Retirement Security Trust Fund Board chaired by the state treasurer and comptroller.

The bill requires the trust's plan to offer individual retirement accounts (IRAs) with a number of specified features, including account portability and options for spousal benefits and lump sum payments when the employee retires.

The plan cannot be open for enrollment until the (1) board determines that it will be self-sustaining, (2) board establishes a website featuring information on employer-sponsored retirement plans with registered vendors, (3) retirement plan's IRAs qualify for favorable tax treatment under the Internal Revenue Code (IRC), and (4) plan is determined not to be an employee benefit plan under the federal Employee Retirement Income Security Act (ERISA). The plan must open to enrollment no later than August 1, 2014 or 90 days after those conditions are satisfied, whichever is later.

Additional plan requirements under the bill include:

1. annual declarations of the interest rate for IRAs for each upcoming year;
2. annual administrative fees not exceeding 1% of the total trust balance;

3. all expenses, including trust employee costs, must be paid from money collected by the trust;
4. qualified employers (those with at least five employees) must offer employees a payroll deduction option to join the trust program unless they offer a different employer-sponsored retirement plan;
5. the default employee contribution must be at least 2% but not more than 5% of salary;
6. employers are not responsible for the administering or investing of the fund;
7. employers must not be liable for the investment return;
8. the state is not liable for payment of the IRA balance that participants earn; and
9. financial liabilities in excess of trust assets must be borne by the treasurer-selected fund insurers.

Under the bill, the trust will be a nonlapsing fund held by the treasurer separate and apart from all other state funds and accounts. The treasurer is responsible for receiving and investing money held in the trust which must receive and hold all payments, deposits, contributions, and gifts intended for it. Funds are held until disbursed in accordance with the bill's provisions.

The website featuring employer-sponsored plans is intended to assist qualified employers in finding retirement plan vendors that can be used in lieu of the bill's plan. The cost of the website must be borne by the registered vendors appearing on the website.

EFFECTIVE DATE: July 1, 2014, except for the section adding the name of the new trust to the list of existing trusts administered by the treasurer, which is effective on passage.

§ 1 — DEFINITIONS

Under the bill:

1. an “eligible employee” is anyone employed by a qualified employer except anyone (a) age 17 or younger on January first of each year or (b) included in a union agreement, if there is evidence that retirement benefits were the subject of good faith bargaining between the union and the employer or employers, and
2. a “qualified employer” is any person, corporation, limited liability company, firm, partnership, voluntary association, joint stock association, or other entity that employs at least five people in Connecticut, except a public-sector employer, including any municipality, unit of a municipality, or municipal housing authority.

§ 2 — TRUST

The trust must receive and hold all payments, deposits, contributions, gifts, bequests, endowments, or government grants and any other public or private funds intended for it. Investment earnings credited become part of the trust. Funds are held until disbursed in accordance with the bill’s provisions.

The funds in the trust are not property of the state, and the trust must not be construed to be a department, institution, or agency of the state. Money in the trust cannot be commingled with state funds, and the state has no claim to or against, or interest in, the funds.

Any contract entered into by, or any obligation of, the trust does not constitute a debt or obligation of the state. The state has no obligation to any designated beneficiary or any other person because of the trust, and all amounts obligated to be paid from the trust must be limited to amounts available for the obligation on deposit in the trust.

The amounts in the trust may only be disbursed in accordance with the bill’s provisions. The trust must continue in existence as long as it holds any deposits or has any obligations and until its existence is

terminated by law. Upon termination, any unclaimed assets must return to the state. The trust's property is governed by the state law that addresses abandoned property held by a fiduciary.

The trust constitutes an instrumentality of the state and must perform essential governmental functions, as provided in the bill.

Deposits, Rollover Contributions, and Use of Assets

The state treasurer is responsible for receiving and investing money in the trust. The trust can receive only cash deposits or rollover contributions from certain tax-deferred retirement accounts or annuity plans under the IRC (specifically, 402(c), 403(a)(4), 403(b)(8), and 457(e)(16) plans). Only participants who have contributed to the trust can deposit rollover contributions. Depositors and designated beneficiaries may direct the investment of any contributions or amounts held in the trust only in specific fund options the trust provides.

The trust's assets must be used for distributing individual retirement savings balances to the participants and paying the trust's operational, administrative, and investment costs.

§§ 3 & 14 — TRUST FUND BOARD

The bill establishes the Connecticut Retirement Security Trust Fund Board (the "board") as the fund trustee. The board is charged with implementing and administering the trust, including the design of the public retirement plan.

The board consists of the following 11 trustees:

1. the Senate president pro tempore appoints one, who must be an academic expert on retirement plan designs, serving an initial term of four years;
2. the House speaker appoints one, representing a senior citizen advocacy organization, serving an initial term of four years;
3. the Senate majority leader appoints one, who must be a labor union representative, serving an initial term of four years;

4. the House majority leader appoints one, who must be an employee retirement plan manager representing the business community, serving an initial term of four years;
5. the Senate minority leader appoints one, who must be an expert in designing retirement plan options for businesses, serving an initial term of three years;
6. the House minority leader appoints one who must have expertise in consumer retirement planning representing the business community, serving an initial term of three years;
7. the governor appoints one who must be an academic expert in the needs of the aging, serving an initial term of three years;
8. the state comptroller, or his designee;
9. the state treasurer, or her designee;
10. the labor commissioner, or her designee; and
11. the Office of Policy and Management secretary, or his designee.

All appointments to the board must be made by July 31, 2014. Following the expiration of their initial terms, subsequent legislative leader and gubernatorial appointees will serve three-year terms. Any vacancy must be filled by the appointing authority not later than 30 calendar days after the vacancy. Any trustee previously appointed to the board may be reappointed.

The comptroller and the treasurer must serve as board chairpersons (apparently they will be co-chairs). The chairpersons must hold the board's first meeting by August 10, 2013. It must meet at least monthly.

The trustees serve without pay but, within available appropriations, receive reimbursements for standard travel and other necessary expenses.

Each trustee must, within 10 calendar days after appointment, take an oath that he or she will diligently and honestly administer the

board's affairs, and will not knowingly violate or willingly permit violations of the applicable trust law. Each trustee's term begins from the date the trustee takes the oath, which must be administered by the comptroller or treasurer.

Each trustee has one vote on the board. A majority of the trustees constitutes a quorum. The board is within the retirement division of the comptroller's office for administrative purposes only.

§ 15 — Board Ethics

The bill requires each trustee to file, with the board and the Office of State Ethics, a statement of financial interests, as described by law. The statement is a public record.

§ 3 — BOARD DUTIES

The board, on behalf of the trust and to implement the plan, must carry out a number of duties specified in the bill.

It must establish consistent terms for each IRA offered through the trust's plan. The terms must include:

1. payment into the trust by payroll deduction or rollover contributions from certain tax-deferred retirement accounts or annuity plans under the IRC;
2. termination, withdrawal, or transfer of payments under the trust, including the purchase of an annuity product upon retirement;
3. changing the identity of a designated beneficiary;
4. any administrative charges or fees; and
5. annual interest allocated to IRAs based on the trust performance.

The board must also:

1. enter into contracts for any legal, actuarial, accounting, custodial, advisory, management, administrative, advertising, marketing,

and consulting services needed for the plan and pay for these services from the trust;

2. adopt regulations necessary to carry out the board's duties and, at its discretion, establish rules and regulations that it deems necessary or desirable to facilitate the trust's proper administration (rules and regulations the board establishes are binding on all parties dealing with the board and all people claiming trust benefits);
3. hire staff, including a program administrator;
4. form working groups as necessary to (a) solicit feedback from key stakeholders on the plan's design, (b) advocate for changes in federal retirement law to improve retirement security, (c) assess the plan's impact on reducing public assistance costs for the elderly in the state, and (d) determine if changes in federal or state tax law could help employees in the state save for retirement;
5. develop alternative plan designs, if necessary, to help eligible employees in the state save for retirement; and
6. ensure the trust complies with all applicable federal and state laws, rules, and regulations to the extent necessary to meet federal tax-deferral or tax-exempt benefit criteria under the IRC.

In conducting the trust's business, the board must act:

1. with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent person acting in a similar capacity would use in the conduct of a similar enterprise; and
2. in accordance with state statutes and strict fiduciary standards and responsibilities.

§ 7 — BOARD POLICIES AND PROCEDURES

The board, must establish and evaluate policies and procedures necessary to implement the public retirement plan. It must:

1. design, establish, and operate the plan to (a) increase access and enrollment in quality retirement plans that provide an annuitized benefit, (b) provide a guaranteed rate of return, (c) reduce the need for public assistance through a system of prefunded retirement income, (d) offer low administrative costs and streamlined enrollment, (e) minimize the need for financial sophistication for plan participants, and (f) ensure trust and transparency in the management of retirement funds through oversight and ethics review of plan fiduciaries;
2. explore and establish investment options that allow plan participants to convert IRA balances to secure retirement income without the state incurring debt or liability;
3. establish a process for plan participants to switch from the default of lifetime annuity to lump-sum payout on retirement;
4. disseminate educational information concerning saving and planning for retirement;
5. disseminate information concerning the tax credits available to small business owners for establishing new retirement plans and the federal retirement savings contribution credit available to low- and moderate-income households for qualified savings contributions;
6. determine the eligibility of an employer, employee, or any other individual to participate in the plan;
7. evaluate and establish the process by which a plan participant must contribute a portion of his or her salary or wages to his or her IRA;
8. evaluate and establish the process by which a qualified employer must credit the plan participant's contributions to his or her IRA through payroll deposit;
9. evaluate and establish the process by which a qualified employer can contribute to a plan participant's IRA, provided that the

contribution must (a) be allowed under the IRC and (b) not cause the plan to be treated as an employee benefit plan under ERISA;

10. design and establish the process (a) for enrolling eligible employees in the plan and (b) by which an individual or employee of a nonparticipating employer may enroll in or make contributions to the program. This process must include an information packet with the paperwork for an eligible employee to enroll in or opt-out of the plan or adjust his or her contribution level;
11. develop one or more payroll deposit savings arrangements through which qualified employers may make deposits into the trust;
12. establish and maintain a secure website that displays all board-issued public notices and such other information the board deems relevant for public education;
13. submit a report to the General Assembly regarding any changes necessary for the plan's implementation; and
14. set maximum investment levels in accordance with annual contribution limits for IRAs set by the IRS.

§ 4 — IRA FEATURES

The board must prescribe the plan design features. It can amend the features from time to time to serve the interests of eligible employees, plan participants, qualified employers, and other stakeholders. The plan must:

1. assure portability by keeping individual retirement accounts for each plan participant;
2. transition to an inflation-indexed annuity with options for spousal benefits and lump-sum distribution when the participant retires;

3. offer a guaranteed interest rate to plan participants upon the board analyzing expected rates of return on trust assets;
4. include a written quarterly report detailing (a) the individual retirement savings balance of a plan participant's IRA, (b) the estimated value of assets available upon the participant's retirement, (c) an estimate of the participant's expected monthly retirement income, and (d) other specifics;
5. encourage participants to preserve retirement saving by explaining the consequences of failing to rollover distributions from the IRA to another retirement plan (the explanation must meet similar requirements to those set in the IRC for qualified retirement plans);
6. require that all IRA assets, whether contributed by an employee or an employer or accrued through investments, must vest immediately upon an employee's enrollment;
7. provide preretirement death benefits so a plan participant can bequeath assets to beneficiaries; and
8. ensure that all contributions to IRAs qualify for tax benefits under the IRC and the state tax code.

Each qualified employer must allow eligible employees to contribute to the plan through payroll deduction and through any other means prescribed by the board.

The quarterly report must be made available through a secure Internet web site and must comply with all federal regulations regarding reporting.

§ 5 — TREASURER'S DUTIES

The treasurer, on behalf of and for purposes of, the trust, must:

1. receive and invest money in the trust in any instruments, obligations, securities, or property in accordance with the bill's investment guidelines (see below);

2. procure the insurance she considers necessary to guarantee the rate of return and protect the trust's property, assets, and activities, or deposits or contributions to the trust;
3. apply for, accept, and expend gifts, grants, or donations from public or private sources to enable the trust to carry out its objectives; and
4. establish one or more funds within the trust and maintain separate accounts for each IRA.

§§ 6 & 18 — INVESTMENT GUIDELINES

Under the bill, the treasurer must invest the amounts on deposit in the trust in a manner reasonable and appropriate to achieve the trust's objectives, exercising the discretion and care of a prudent person in similar circumstances with similar objectives. She must give due consideration to rate of return; risk, term or maturity; diversification of the total portfolio within the trust; liquidity; projected disbursements and expenditures; and the expected payments, deposits, contributions, and gifts to be received.

The treasurer must not require the trust to invest directly in Connecticut state or municipal debt. The trust assets must be continuously invested and reinvested in a manner consistent with the trust objective until disbursed upon order of the board or for expenses incurred due to trust operations.

The bill places the treasurer's trust investments under the same oversight and requirements established in the trust statutes for funds including the Teachers' Pension Fund, the State Employee Retirement Fund, and the Connecticut Municipal Employees' Retirement Fund.

§ 3 — TREASURER'S ANNUAL REPORT

Each year the treasurer must publish and forward to the board a consolidated report showing the trust's fiscal transactions for the preceding fiscal year, including:

1. gain or loss by category of security,

2. a reconciliation of assets showing the trust's progression from one year to the next,
3. the amount of the accumulated cash and securities in the trust, and
4. the last balance sheet showing the trust's financial condition by means of an actuarial valuation of its assets and liabilities.

Assets must be shown at book and market value and by type or term of investment, and gain or loss must be reported by security type.

§§ 9 & 10 — PLAN ENROLLMENT, INTEREST RATES, EMPLOYEE CONTRIBUTIONS AND FEES

The board must open the public retirement plan to enrollment by August 1, 2015, or 90 days after the bill's required conditions are met (see §§ 8 and 17), whichever is later.

Interest

Before the plan opens, the board must declare (1) the interest rate to be allocated to IRAs and (2) the default contribution rate from the date of the plan's opening until December 31 of that year.

On or before December 1, of the year the plan opens, and annually thereafter, the board must declare the IRA interest rate for the following calendar year. Interest must be (1) allocated to IRAs, (2) computed at the stated interest rate on the balance of an eligible employee's account, and (3) compounded daily.

Employee Contribution Rates

The board must set a default contribution amount of at least 2% but not more than 5% of the employee's salary. The board may vary the amount according to the length of time that an eligible employee has contributed to the plan.

The board must, annually by December 1, notify all plan participants of any changes in the default contribution rate for the following calendar year. The first such notification must be by

December 1 of the first year the plan opens for enrollment.

Plan participants may, at any time and on a form and in a manner prescribed by the board, elect to change their contribution level. (Apparently, this means a participant may increase his or her contribution.)

Administrative Fees and Expenses

Administrative fees must be allocated to each IRA on a pro rata basis. Annual administrative expenses must not exceed 1% of the total trust balance. All expenses, including employee costs, incurred to implement, maintain, advertise, and administer the plan must be paid from money collected by or for the trust.

§ 10 — PLAN ENROLLMENT

Not later than 90 calendar days after the board opens the plan for enrollment, qualified employers that do not offer another retirement saving option to employees must offer eligible employees a payroll deposit option to facilitate participation in the plan. Each qualified employer must enroll each eligible employee in the plan at the default contribution rate unless such employee elects to opt out.

Employee Opt-Out

An eligible employee can opt out of the plan by providing written notice, on a form and in a way the board may prescribe, to the board and his or her employer.

Following initial implementation of the plan and at least biennially afterwards, qualified employers must designate an open enrollment period during which each eligible employee who previously opted out of the plan must opt out again or be enrolled. Any eligible employee not participating in the plan may enroll at any time by submitting written notice, on a form and in a manner the board may prescribe, to the board and his or her employer.

The board, in coordination with the labor commissioner, must disseminate information to employers regarding the employers' obligation under the bill.

Other Options

A qualified employer retains the option at all times to set up any type of employer-sponsored retirement plan, including a defined benefit retirement plan, a 401(k) defined contribution plan, a simplified employee pension plan, a savings incentive match plan, or an automatic enrollment payroll deduction IRA instead of offering the plan created under the bill.

An employer that establishes an employer-sponsored retirement plan can terminate payroll deposit into the state's plan as long as it notifies each eligible employee and plan participant within a reasonable time and in a manner the board prescribes.

Under the bill, employers who are not required to participate in the state plan because they are sponsoring their own plan, can allow their employees who are not eligible for the employer plan to join the state plan.

The bill also anticipates ways that employees can join the plan even if their employer is not required to do so. One is for employers with too few employees to require participation to allow their employees to participate. The bill also allows an employee whose employer is not required to participate to participate individually. Under this second method, since the employer is not participating, the employee will not be able to contribute via a payroll deduction.

§ 8 — PRIVATE RETIREMENT PLAN VENDOR WEBSITE

Before opening the plan under the bill, the board must establish a website to feature information about employer-sponsored retirement plans and take a number of steps related to posting vendor information on the website.

The bill defines a vendor as a company conducting business in the state that (1) is a regulated investment company or an insurance company or (2) provides payroll or recordkeeping services and offers retirement plans or payroll deposit IRA arrangements using products of regulated investment companies. It does not include individual

registered representatives, brokers, financial planners or agents.

The board must:

1. establish and maintain a secure Internet website to (a) provide information about employer-sponsored retirement plans and payroll-deduction IRAs, and (b) assist qualified employers to identify retirement plan vendors they can use in lieu of participating in the bill's plan;
2. include the website address on any posting to the website or in other materials offered to the public regarding the program;
3. prior to implementing the website, and at least annually thereafter, provide notice to vendors (a) that the website is active, (b) that vendors may register for inclusion on the website, and (c) regarding the process for website inclusion; and
4. establish an appeals process for vendors denied registration or removed from the website pursuant to the bill.

Requirements for Registration

Each vendor that registers to be listed on the website must provide a:

1. statement of its experience providing employer-sponsored retirement plans and payroll-deduction IRAs in Connecticut and other states, if applicable;
2. description of its retirement investment products; and
3. disclosure of all expenses paid directly or indirectly by retirement plan participants, including penalties for early withdrawals, declining or fixed withdrawal charges, surrender or deposit charges, management fees, and annual fees.

Vendors Bear Website Cost

Under the bill, the cost of the registration system and the website must be borne solely and equally by registered vendors, based on the

total number of registered vendors. Since the bill also requires the website to be established before the fund's plan is offered and the website costs are borne by vendors, it appears possible that without participating vendors, the plan could not open.

Removal From Website

The board can remove a vendor from the website if the vendor:

1. submits materially inaccurate information,
2. does not remit assessed fees within 60 days from the assessment date, or
3. fails to submit to the board notice of any material change to the vendor's registered investment products.

Any vendor found to have submitted materially inaccurate information to the board must be allowed 60 calendar days to correct the information.

§ 11 — STAKEHOLDER INPUT

From time to time, the board must consider the opinions of eligible employees, plan participants, qualified employers, and other stakeholders in modifying the retirement plan by:

1. holding public hearings to allow eligible employees, plan participants, qualified employers, and other stakeholders to comment on the plan, including the default contribution amounts, guaranteed interest rates, and fees charged;
2. surveying plan participants and qualified employers to assess their experience with the plan; and
3. assessing the marketplace of employer-sponsored retirement plan offerings to determine what is otherwise available to employees and residents in the state.

§ 12 — PROTECTIONS FOR EMPLOYERS

Under the bill, qualified employers are not be liable for an eligible

employee's decision to participate in, or opt out of, the plan or for the investment performance of assets deposited in the trust.

Also, employers are not:

1. a fiduciary or considered to be a fiduciary of the plan;
2. responsible for the administration, investment, or investment performance of the plan; or
3. liable with regard to investment returns, plan design, or retirement income paid to plan participants.

A qualified employer's voluntary contribution made under the bill may not (1) create any of these liabilities or responsibilities or (2) change the employer's relationship to the plan or the employer's obligations to eligible employees.

§ 13 — PROTECTIONS FOR THE STATE

The bill specifies that the state is not liable for the payment of the IRA balance earned by plan participants.

Any financial liability for the payment of retirement account balances in excess of funds available in the trust must be borne by the entities with whom the treasurer contracts to provide insurance to protect the value of the trust. Under another provision of the bill, the treasurer must procure financial liability insurance that she deems necessary (§ 5). It is not clear what would happen if she does not deem this insurance necessary and promised IRA account payments exceed available funds.

§ 14 — COMPLAINT PROCESS

The bill prohibits qualified employers, without good cause, from failing to allow an eligible employee to participate in the plan. The employers must remit all money intended for the trust within 14 calendar days after the date they were deducted from plan participants' wages.

Any eligible employee or plan participant aggrieved by a violation

of the bill's provisions may file a complaint with the labor commissioner. Upon receipt of a complaint, the commissioner may hold a hearing. Any party aggrieved by the commissioner's decision may appeal it under the Uniform Administrative Procedure Act (UAPA see BACKGROUND).

§ 15 — BOARD REPORTS

The board must submit a report to the governor, Senate president, and House speaker, that includes, at a minimum, a summary of the plan design and operation, the number of participants, the average participant contribution, and the rates of return and administrative costs as a percent of total plan assets. The report is due by the later of August 1, 2015 or 90 days after the bill's criteria to start the trust and plan are met.

By January 1 following the first full year the trust and plan are in operation, the board must submit to the General Assembly, the governor, Senate president, and the House speaker, an annual audit, of the operations of the trust and plan prepared in accordance with generally accepted accounting principles by an independent certified accountant.

§ 16 — MARKET FEASIBILITY STUDY

The board must conduct a market feasibility study to determine whether the necessary conditions for implementing the bill can be met, including:

1. likely participation rates;
2. contribution levels;
3. rate of account closures and rollovers;
4. ability to provide employers with a payroll deposit system for remitting contributions from employees;
5. start-up funding options until the trust has enough funds to be self-sustaining; and

6. likely insurance costs, and whether the costs should be subject to the limit on annual administrative expenses.

The board must submit a report on the study's findings and any recommendations to the governor and the Labor Committee by December 15, 2014.

§ 17 — DETERMINATION OF TRUST AS FINANCIALLY SELF SUSTAINING AND EXEMPT FROM ERISA

Under the bill, the trust's retirement plan must clear two tests before it can be implemented.

First, the board must determine that, based on the bill's provisions and the required market analysis required, (1) the trust will be self-sustaining and (2) startup funds are available through a nonprofit or other private entity, federal funding, or state appropriation in amounts sufficient to allow the board to implement the trust's plan.

Second, the board must determine that (1) the arrangements for IRAs qualify for the favorable federal income tax treatment ordinarily accorded to IRAs under the IRC and (2) the trust's plan is determined not to be an employee benefit plan under the ERISA. If the plan were to be determined to be under ERISA regulatory control, it could jeopardize the other state-administered retirement trust funds, which currently are not under ERISA. ERISA has fiduciary and other requirements that the various state funds do not currently have to meet.

BACKGROUND

UAPA

Under the UAPA, only an agency's final decision can be appealed to Superior Court. Final decisions are those resulting from a contested case where the affected party is given a right to a hearing. A "contested case" is an agency proceeding where a person's legal rights, duties, or privileges are determined by statute. UAPA regulates how agencies conduct contested cases, including (1) determining the parties, (2) setting notice requirements, (3) guiding the conduct and record of the

hearing, and (4) setting rules for appeals.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable

Yea 7 Nay 3 (03/18/2014)